Supreme Court, U.S.
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No. 95-262

In The

Supreme Court of the United States

October Term, 1995

EDWARD A FEAVER, acting secretary of the Florida Department of Health and Rehabilitative Services, et al.,

Petitioners,

v.

ESTATE OF MARY DORIS LeCLAIR, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether a consent decree may be voided under Fed. R. Civ. P. 60(b)(4) on the basis of either standing or relief that is outside the scope of the pleadings?

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RULE INVOLVED

Fed. R. Civ. P. 60(b)(4) is at issue. Rule 60(b) is set forth in pertinent part:

Relief from Judgment or Order

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: . . . (4) the judgment is void.

STATEMENT OF THE CASE

This cause concerns an action arising from the 1979 tragic death of a profoundly retarded young woman institutionalized by the State of Florida. She died because of the inappropriate and grossly negligent administration of lithium, a powerful psychotropic drug. (C).[1] Respondents/Plaintiffs' action for compensatory and punitive damages was uniquely settled in 1983. (D). Respondents received $7,500 in compensatory damages and exchanged their punitive damages claim for the enforcement of a regulation regarding the administration of psychotropic medications in all state institutions. The initial agreement called for retention of jurisdiction for nine months. (D-3). However, the district court has retained jurisdiction as a

[1] Appendix references are to appendices in Petitioners' Brief.

result of either joint motions or Respondents' request as a result of Petitioners/Defendants' failure to comply with the consent order. (R-109, 111, 112, 115, 132, 133).[2] In August 1988, the parties agreed to an order appointing a substitute for the district court's compliance monitor. (R-134). Another agreement, approved by the district court in 1989, modified the consent decree by revising the regulation. (R-148 & 160).

On February 17, 1994, ten years and four months after entry of the consent decree, defendants moved to vacate it under Rule 60(b)(4) & (6),[3] asserting for the first time that plaintiffs did not have standing for the relief obtained in 1983 and that the relief was outside the scope of the pleadings. (R4-177). This motion was denied by the district court on August 1, 1994. (B). In its opinion, the district court reviewed the history of the case and found, *inter alia*, that plaintiffs' "stated litigation objective was to ensure that proper procedures were implemented" by defendants for the administration of psychotropic medications. (B-1). The district court, addressing primarily the scope of the pleadings arguments raised by defendants, found that the "consent decree was a valid exercise of this Court's equitable authority." (B-7). The district court held that *Local No. 93 v. City of Cleveland*, 478 U.S. 501 (1986), "intended to insure a rational connection between the case and the relief." (B-6). The district court found

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[2] Record citations are in accordance with the district court's docket as certified to the Eleventh Circuit Court of Appeals. The monitor's compliance report of March 31, 1994, shows that three facilities had come into compliance by that time. (R-160).

[3] Petitioners abandoned Rule 60(b)(6) on appeal.

such a connection because plaintiffs' primary litigation objective was to insure proper administration of psychotropic drugs as a prevention from future harm. The district court stated that plaintiffs achieved this objective in a more straightforward way than by punitive damages and concluded that the relief fell within the scope of the pleadings. (B-6).

After oral argument, before Eleventh Circuit Judges Hatchett, Edmonson and Gibson (sitting by designation), the district court was affirmed per curium without opinion. (A).

Before this Court, Petitioners, in an attempt to support their argument that the consent decree is outside the scope of the pleadings, omit important facts from their Statement of the Case that bear on the systemic nature of the relief sought by Respondents. The Second Amended Complaint (as had the Complaint and the Amended Complaint) specifically alleged that the failure to properly monitor the drug's administration was due to the failure to train staff regarding its side effects (C-13), inadequate procedures to monitor blood levels to measure potential toxicity[4] (C-14), and failure to implement an order to discontinue a pre-existing prescription. *Id.* Further, the Second Amended Complaint asserted that state officials

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[4] For example, blood was shipped from Gainesville to a Tampa laboratory for testing. The laboratory *telephoned* the results to the institutional pharmacy who in turn *telephoned* the results to the physician. This fundamentally inadequate system directly caused the death when a blood serum result was misrecorded from a level of near toxicity to a minimal level causing the physician to increase to toxic levels rather than decrease the dosage. (C-14).

"knew of the existence of serious, general problems associated with the administration of psychotropic drugs in HRS facilities before the lithium trials were instituted . . . [and they] failed to perform their duty to promulgate and enforce procedures and policies which would have remedied those acknowledged problems." (C-15). Finally, the Second Amended Complaint, in addition to compensatory and punitive damages, sought a declaratory judgment that Petitioners' actions and omissions violated fundamental constitutional and statutory rights. (C-3).

In response to a motion to dismiss, Respondents asserted, *inter alia*, that the death was "due to a gross systemic process failure . . . [and invoked the] Court's jurisdiction to scrutinize the systemic failure of HRS to protect its wards from potentially deadly experimentation [to] assure . . . that other parents will not be so aggrieved." (R-25). The appendix to that motion contained evidence of HRS' knowledge of the systemic nature of these problems. The district court in its order of partial dismissal of the original complaint recognized that lithium was being administered to 40 other residents of Gainesville Sunland, that the treatment was experimental, proscribed without appropriate medical diagnosis, and improperly administered. (R-70-2).

The Settlement Agreement specifically identified that Respondents' litigation objective was for state officials "to establish an appropriate and adequate system for administering psychotropic medications safely and therapeutically in HRS institutions." (D-2).

REASONS FOR DENYING THE WRIT

This is a highly fact specific case. It meets none of the traditional guidelines for granting the writ and raises no issues requiring this Court's guidance. In seeking this Court's review, Petitioners emphasize alleged violations of Article III, assert a conflict where none exists with decisions of this Court and a recent decision in the Court of Appeals for the District of Columbia,[5] and rail against consent decrees in institutional reform cases.[6] Their arguments fail. The petition should be denied.

I. THE DISTRICT COURT HAD PERSONAL JURISDICTION OVER THE PARTIES AND SUBJECT MATTER JURISDICTION OVER THE CAUSE, THUS INSULATING THE CONSENT DECREE FROM SUCCESSFUL ATTACK UNDER RULE 60(b)(4).

In their zeal to rid themselves of agreed to obligations under the consent decree, Petitioners raise issues

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[5] Petitioners assert conflict with *Local No. 93*, 478 U.S. at 501, *Missouri v. Jenkins*, ___ U.S. ___, 115 S.Ct. 2038 (1995), and *United States v. Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995). There is no such conflict. *See infra* Argument II.

[6] *See* Pets' Brief at 15-20. Whatever the merits of this argument or the policy of the current Governor of the State of Florida not to enter consent decrees, *id.* at 20, they have no relevance to the instant case. There is not one iota of evidence in this record to support the implicit allegation that the consent decree was the result of state officials leveraging appropriations for pet programs. *Id.* at 17. It is difficult to see how a regulation whose goal is to avoid death at the hands of the state from the inappropriate and negligent administration of psychotropic drugs can in any way be considered a "pet program."

irrelevant to their Rule 60(b)(4) Motion to Vacate. Indeed, their petition never even mentions, much less argues, the applicability of that Rule. Here, as throughout the proceedings in the lower courts, Petitioners fail to recognize that a consent decree is a final judgment which can only be found void *ab initio* under extremely limited circumstances. Once a district court has both subject matter and personal jurisdiction, its judgment cannot be voided as if it had never been.[7] This principle is well established in the decisions of this Court. Over one hundred years ago, this Court recognized a distinction between those facts which are essential for the establishment of jurisdiction and the validity of the proceedings and those which "when properly alleged, and established . . . cannot be attacked." *Noble v. Union River Logging R.R. Co.*, 147 U.S. 165, 173-74 (1893).[8] Thus, federal courts have the power to determine whether they have subject matter jurisdiction over an action. *Jackson v. Irving Trust Co.*, 311 U.S. 494, 503 (1941) (collateral attack on jurisdictional issues fails as findings of district court necessarily involved determination of its own jurisdiction).

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[7] This is in contrast to a district court's ability to vacate, modify, or terminate judgments under Rule 60(b)(5). *See, e.g., Rufo v. Inmates of the Suffolk County Jail*, 502 U.S. 367 (1992). *See infra* pp. 9 & 11.

[8] In the first category are, *inter alia*, defects in the service of process, appointment of an administrator of the estate of a living person, or a court martial and sentencing of a person not in military service by a military tribunal. *Id.* at 174. In the second, *inter alia*, are diversity of citizenship and amount in controversy. *Id.*

Once this determination is made and judgment entered, the method of attacking jurisdiction is by direct appeal. *Stoll v. Gottlieb*, 305 U.S. 165, 172-73 (1938). *See also General Investment Co. v. New York Central R.R. Co.*, 271 U.S. 228, 230 (1926), *relied on in United States v. Fidanian*, 465 F.2d 755 (5th Cir. 1972) (erroneous judgments are not void). Further, when a party had an opportunity to challenge subject matter jurisdiction but failed to do so, as in the instant case, a later motion to void the judgment must fail. *Chicot County Drainage Dist. v. Baxter State Bank*, 308 U.S. 371 (1940) (despite subsequent finding of unconstitutionality of statute upon which judgment was based, opportunity to raise jurisdictional issue at outset found sufficient). Rule 60(b)(4) principles apply to cases settled by consent. *V.T.A., Inc. v. Airco*, 597 F.2d 220, 224 (10th Cir. 1979).[9] This jurisprudence continues to be viable today. *See, e.g., Hoult v. Hoult*, 57 F.3d 1, 6-8 (1st Cir. 1995) (declining to void judgment when court had personal and subject matter jurisdiction).[10]

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[9] Indeed, this principle is of even greater importance in matters concluded by a consent decree. For example, had Respondents known that Petitioners would later try to defeat their litigation objective by raising a standing (to obtain injunctive relief) issue, they could have gone to trial, joined other parties and/or amended the complaint to add class allegations.

[10] This is the accepted view in the federal courts. *See, e.g., Lubben v. Selective Serv. Sys.*, 453 F.2d 645, 649 (1st Cir. 1972) (change in applicable law does not void judgment on jurisdictional grounds); *Vecchione v. Wohlgemuth*, 426 F. Supp. 1297, 1308 (E.D. Pa.), *aff'd*, 558 F.2d 150 (3d Cir.), *cert. denied*, 434 U.S. 943 (1977) (denying motion brought on basis of standing, lack of subject matter jurisdiction and relief barred by the Eleventh Amendment); *Marshall v. Board of Educ.*, 575 F.2d 417, 422-23 (3d Cir. 1978) (change in applicable law does not void judgment on

As the district court had subject matter jurisdiction at the outset of the case and the case having withstood in part a motion to dismiss, and judgment subsequently entered, that judgment cannot now be set aside as void *ab initio* under Rule 60(b)(4) on the basis of an alleged lack of standing for the relief obtained. The First Circuit rejected an attack on jurisdiction, similar to the one made here, holding that the plaintiffs' standing, and thus whether or not the suit presented a case or controversy, was "not open to attack by a motion to vacate once a consent decree has been entered." *Coalition of Black Leadership v. Cianci*, 570 F.2d 12, 15 (1st Cir. 1978), *relying on Swift & Co. v. United States*, 276 U.S. 311 (1928). In *Swift*, the defendant had also urged the lower court to vacate a consent decree on case or controversy grounds. The Supreme Court refused to do so, stating:

> The court had jurisdiction both of the general subject-matter . . . and of the parties. If it erred in deciding that there was a case or controversy, the error is one which could have been corrected only by an appeal or by a bill of review. . . . On a motion to vacate, the determination by the Supreme Court of the District that a case or controversy existed is not open to attack.

276 U.S. at 326.

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jurisdictional grounds); *Kansas City Southern Ry. v. Great Lakes Carbon Corp.*, 624 F.2d 822, 825 (8th Cir.), *cert. denied*, 449 U.S. 955 (1980) (failure to join indispensable party); *Honneus v. Donovan*, 691 F.2d 1, 2-3 (1st Cir. 1982) (diversity jurisdiction); *Nemaizer v. Baker*, 793 F.2d 58, 64-65 (2d Cir. 1986) (improper removal from state court).

This is precisely the situation here as the lower court had both subject matter and personal jurisdiction. *See also Vecchione*, 426 F. Supp. at 1308. Neither party has located any case where a judgment has been voided because of want of standing.[11]

Neither may a consent judgment be voided on the basis that it provides relief outside the scope of the pleadings. The time to question whether relief is within the scope of the pleadings is at the time of a court's approval of a consent decree. *Local No. 93* guides that process, but has no bearing on subsequent attempts to void agreements under Rule 60(b)(4). None of the cases relied upon by Petitioners suggest otherwise.

Thus, Petitioners' arguments on standing and scope of the pleadings are irrelevant to this case. Petitioners implicitly ask this Court to engraft onto the well settled jurisprudence of Rule 60(b)(4) the developing standards of institutional reform litigation under Rules 23 (approval) and 60(b)(5) (modification and termination). They present neither legal nor policy arguments for doing so.

However, there are substantial policy reasons for not permitting such intrusion into 60(b)(4). First, as stated above, the federal courts have long recognized the interests of finality in judgments, which policy has become embedded in Rule 60(b)(4). Final judgments are only set

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[11] Before the lower courts, Respondents sought to rely on *Page v. Schweiker*, 786 F.2d 150 (3d Cir. 1986). However, while the issue of voiding judgments was discussed in the three separate opinions in that case, the decision turned on another point entirely. *Id.* at 154.

aside in the rarest of circumstances where there has been a clear usurpation of power by a court leading to a fundamental flaw in due process.[12]

Further,

> '[h]aving entered into the consent decree rather than bring the dispute . . . to trial, [defendants] cannot now evade . . . that decree. . . . ' Such a result would impugn the integrity of the Court and allow the [defendants] to avoid their bargained-for obligations – while retaining the benefits of concessions obtained during negotiations.

Kozlowski v. Coughlin, 871 F.2d 241, 245 (2d Cir. 1989) (citing to district court).

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[12] There are, however, a few rare circumstances where judgments have been voided because of a complete lack of subject matter jurisdiction at the time the action commenced. *See, e.g., Kalb v. Feuerstein*, 308 U.S. 433, 444 (1940) (voiding state court judgment because Congress' power over bankruptcy was plenary); *United States v. Indoor Cultivation Equip.*, 55 F.3d 1311, 1316 (7th Cir. 1995) (voiding default judgment of seizure of drug related property for failure of United States to comply with jurisdictional section of statute). Judgments also may be set aside when there is a fundamental flaw in due process by the failure to have personal jurisdiction. *See, e.g., Misco Leasing v. Vaughn*, 450 F.2d 257 (10th Cir. 1971) (voiding judgment due to lack of personal jurisdiction under long arm statute). *Cf. United States v. Levoy*, 182 B.R. 827, 836 (9th Cir. 1995) (although service defective, government had submitted to jurisdiction of court by filing proof of claims, thus judgment not void on personal jurisdiction grounds). For general discussion of voiding judgment, see 7 Moore's Fed. Prac. ¶ 60.25[2], at 220-38 (2d ed. 1995). *See also* Note, *Filling the Void: Judicial Power and Jurisdictional Attacks on Judgments*, 87 Yale L.J. 164 (1977) (discussion of due process grounds).

Here, over eleven years ago, Respondents bargained away their rights to punitive damages by settling this matter. It is far too late in the day for them to now try the case to conclusion. To void the judgment now would allow Petitioners to reap the benefits of the settlement but evade their part of the bargain. There is simply no reason to permit that result to occur. Moreover, denial of the writ will not require Petitioners to comply with the consent decree in perpetuity. They have available the straightforward route of Rule 60(b)(5) to seek modification or termination of the decree.

II. THE LOWER COURTS' DECISIONS DO NOT CONFLICT WITH ANY DECISIONS OF THIS COURT OR ANY CIRCUIT COURT OF APPEALS.

As discussed *supra* in Argument I, *Local No. 93* applies at the time of a court's approval of a consent decree and has no bearing on motions to vacate under Rule 60(b)(4). Thus, there is no conflict on this basis.

Nor is there conflict with *Missouri v. Jenkins*,[13] in which this Court found the district court had exceeded its power to order certain remedies in a desegregation case. 115 S.Ct. at 2054-55. The majority never mentions Article III jurisdiction nor that consent decrees must fall within the scope of the pleadings, thus Petitioners' statements regarding this case are misleading. Pets' Brief at 11. Crucial to the holding in that case was the context of a litigated order as opposed to a consent decree, because it

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[13] As there is no conflict with this case, there is no basis for Petitioners' request to vacate the opinions in this case and remand with instructions to consider it. *See* Pets' Brief at 20.

is clear that different limits apply to what courts may order and to what parties may agree. *Local No. 93*, 478 U.S. at 525 (consent decree may provide broader relief than the court could have awarded after trial).

Further, contrary to Petitioners' statement at page 13 that *Freeman v. Pitts*, 503 U.S. 467, 112 S.Ct. 1430 (1992), is a consent decree case, it also involved a litigated order, and thus has no bearing on the issues here. While the case was initially settled, the question on appeal was the result of a judicial order. Further, the case does not stand for the proposition that because the district court's remedy was in excess of Article III power, the consent decree is void. *See* Pets' Brief at 13. Rather, it stands for the proposition that once defendants comply with portions of a desegregation decree, judicial supervision as to those aspects may be relinquished. *Freeman*, 503 U.S. at ___, 112 S.Ct. at 1445. An orderly means for withdrawing judicial control upon partial compliance is not the same as "Article III limit[ing] the scope of federal remedial power to the injury alleged." Pets' Brief at 13.

Finally, there is no conflict with *Microsoft*. The issue before the Circuit Court was the scope of a district court's authority to approve or disapprove a consent decree as within the "public interest," pursuant to section 16(e) of the Tunney Act, 15 U.S.C. § 16(e) (1988). 56 F.3d at 1451. Respondents' quotation from *Microsoft*, Pets' Brief at 14, is taken out of context as the quoted material flows from a discussion of the Act's requirements and is not a general statement of consent decree law. Indeed, there is not even a reference in this decision to *Local 93*, the leading "scope of the pleadings" case. More importantly, the district court in the case at bar specifically found that the

relief was within the scope of the pleadings. Thus, there is no conflict between the decisions below in the instant case and *Microsoft*, which adds nothing to the well established jurisprudence in this area.[14]

CONCLUSION

In light of the foregoing, Respondents ask this Court to deny the writ.

Respectfully submitted,

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[14] Neither is there any conflict with *Phoenix Resources, Inc. v. Duncan Township*, 155 F.R.D. 507, 509 (M.D. Penn. 1994), Pets' Brief at 14, which is simply another case arising at the time of the approval of the consent decree, and adds nothing new.